

MAY 27 2008

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Application No.: 10/600,774

Inventor(s): Bryan K. Feller et al.

Filed: June 20, 2003

Docket No.: 9281

Confirmation No.: 5936

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(FAX-USPTO.doc Revised 11/18/2005)

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**CENTRAL FAX CENTER****MAY 27 2008****IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

Application No. : 10/600,774  
Inventor(s) : Bryan K. Feller et al.  
Filed : June 20, 2003  
Art Unit : 3761  
Examiner : Melanie Jo Hand  
Docket No. : 9281  
Confirmation No. : 5936  
Customer No. : 27752  
Title : SANITARY NAPKIN FOR CLEAN BODY BENEFIT

**REPLY BRIEF**

Mail Stop Appeal Brief - Patents  
Commissioner for Patents  
P. O. Box 1450  
Alexandria, VA 22313-1450

**INTRODUCTORY REMARKS**

In response to the Examiner's Answer of March 27, 2008, please consider the following remarks and reconsider the application.

*Remarks begin on page 2 of this paper.*

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Docket No. 9281  
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Reply to Examiner's Answer mailed on March 27, 2008  
Customer No. 27752

### REMARKS

Appellants wish to address three issues in this Reply Brief: (1) the Examiner's interpretation of the term "fluid" as used in the present claims, (2) the Examiner's interpretation of Takahashi et al. (US 6,329,465) with respect to its relevance to composite articles such as diapers, and (3) the Examiner's interpretation of the Takahashi reference with regard to its incorporation by reference to Wade et al. (US 2,957,512).

#### Examiner's Interpretation of "Fluid"

Appellants take issue with the Examiner's interpretation of the term "fluid" as used in the present claims. Specifically, the present claims recite a "fluid permeable facing layer" as an element of the claimed absorbent article.

The Examiner has maintained the current rejections on the basis that the secondary reference, Takahashi et al., teaches an oxygen permeable (albeit water impermeable) material that the Examiner alleges can be used as a "fluid permeable facing layer" in an absorbent article, such as presently claimed. In support of this rejection, the Examiner's Answer asserts that:

As to applicant's argument that Takahashi does not teach a fluid permeable layer because Takahashi only teaches that the film is oxygen-permeable, this is not persuasive because oxygen, as a gas, is also a fluid. Applicant defines "fluid" in exemplary terms in the disclosure by referring to bodily fluids and does not explicitly exclude gasses as being viable fluids. As to applicant's argument that the film of Takahashi is water-impermeable and thus does not meet the claim limitation, it is noted that the features upon which applicant relies (i.e., that the fluid is a specific fluid such as water) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims.

See Examiner's Answer at pages 7-8 (citations omitted). Appellants submit that the Examiner's interpretation of the term "fluid" within the context of the claimed element "fluid permeable facing layer" of the presently claimed absorbent article is improper.

During examination, a claim is to be given its "broadest *reasonable* interpretation consistent with the specification". See MPEP §2111 (emphasis added). Furthermore, a claim is to be construed "in light of the specification as it would be interpreted by one of ordinary skill in the art." See *In re Am. Acad. Of Sci. Tech. Ctr.*, 367 F.3d 1359, 1364 (Fed. Cir. 2004). The present invention is directed to an absorbent article such as a

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catamenial device or a light incontinence product. *See* page 1, lines 6-7. It is well known in the art that such devices are designed to absorb bodily fluids such as menses or urine. They are clearly not intended or designed to absorb gases, such as oxygen. Therefore, within this context, a reasonable interpretation of the term "fluid" would encompass bodily fluids such as menses or urine. As such, a "fluid permeable facing layer" should be properly interpreted to mean a facing layer that is permeable to bodily fluids such as menses or urine. It is unreasonable to interpret such claim language to mean a facing layer that is permeable to gases, such as oxygen, in light of both the present specification and common knowledge in the art. The Examiner's interpretation of the term "fluid" and the claim element "fluid permeable facing layer" is unreasonable and thus improper.

Appellants therefore submit that based upon proper claim construction principles, the claimed element "fluid permeable facing layer" should be interpreted to encompass a facing layer that is permeable to bodily fluids such as menses or urine. As such, the secondary reference Takahashi et al. clearly do not teach or suggest a fluid permeable facing layer as presently claimed. On this basis alone, Appellants submit that the Examiner's rejections should be reversed and all claims be deemed allowable over the cited references.

Takahashi et al. Relevance to Composite Articles

Even if the term "fluid" is construed as asserted by the Examiner, albeit improperly, Appellants submit that Takahashi et al. does not teach or suggest that its material is suitable as a facing layer for an absorbent article.

The Examiner asserts that Takahashi et al., at col. 73, lines 19-30, "teaches that the elastic fiber and fabric disclosed can be used in the production of composite articles such as diapers." *See* Examiner's Answer at page 7. However, Appellants point out that this disclosure of Takahashi et al. indicates the material can be used as a waistband or barrier leg cuff of a diaper, clearly not as a fluid permeable facing layer of an absorbent article. *See* col. 73, lines 23-25.

Appellants therefore submit that the Examiner has improperly considered this disclosure of Takahashi et al. and that the reference fails to teach or suggest a material to be used as a fluid permeable facing layer in an absorbent article as presently claimed.

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Appellants thus submit that the Examiner's rejections should be reversed on this basis alone and all claims be deemed allowable over the cited references.

Takahashi et al. Incorporation by Reference to Wade et al.

Appellants further take issue with the Examiner's reading of the Takahashi et al. reference with respect to its incorporation by reference to the disclosure of Wade et al., US 2,957,512. Takahashi et al. disclose, at col. 73, lines 31-33, that its materials are employable for various structures described in Wade et al. The Examiner asserts that Wade et al. teach an "elastomeric composite fibrous material that can certainly be used as a topsheet material in the article of Weisman, as such elastomeric composite materials are often used for components in a diaper." See Examiner's Answer at page 7.


Appellants, however, respectfully point out that Wade et al. do not teach absorbent articles such as sanitary napkins, but rather teach products such as rugs or carpets (see col. 3, lines 47+) or foundation garments, bathing garments, elastic stockings, ankle braces, belts, garters, galluses, or wrappers for meats (see col. 7, lines 15+). Appellants therefore submit that the Examiner's reading of the Takahashi et al. with regard to its incorporation by reference to Wade et al. is improper and that the Examiner's rejections should be reversed and all claims be deemed allowable over the cited references.

Conclusion

In view of the foregoing, reconsideration of this application and allowance of the pending claims are respectfully requested.

Respectfully submitted,

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Date: May 27, 2008  
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